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NO DEF. BRIEF

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Maite Murphy, Circuit Court Judge

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OCT 23 2014
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

AARON DEVON GREEN

APPELLANT

APPELLATE CASE NO. 2014-000830

ANDERS BRIEF OF APPELLANT

BENJAMIN JOHN TRIPP
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the lower court err in revoking Appellant's probation where Appellant explained to the court that his violations resulted from lack of money and a job but where the court did not further inquire into whether Appellant had made bona fide efforts to find a job or whether measures other than revocation were adequate to protect the State's interests?

STATEMENT OF THE CASE

On July 12, 2012, the Dorchester County Grand Jury indicted Appellant Aaron Devon Green for second degree burglary based on an alleged offense on May 14, 2012. R. 1-2. On December 5, 2012, Petitioner pled guilty to third degree burglary before The Honorable Diane S. Goodstein, who sentenced Appellant to five years' incarceration under the Youthful Offender Act suspended to three years of probation. R. 3.

On September 6, 2013, Petitioner's probation agent Luther S. Brown served Appellant with a probation violation citation. R. 4. On April 11, 2014, Appellant appeared before The Honorable Maite Murphy for a probation violation hearing. Pierce Wehman represented Petitioner and Luther Brown represented the State. R. 6. Judge Murphy revoked Appellant's probation and ordered him to serve out the original five-year sentence. R. 12, lines 17-23; R. 15.

ARGUMENT

**THE LOWER COURT'S REVOCATION OF APPELLANT'S PROBATION
CONSTITUTED REVERSIBLE ERROR BECAUSE THE COURT FAILED TO
MAKE THE FINDINGS PRESCRIBED BY LAW.**

STATEMENT OF FACTS

In the affidavit supporting the probation citation, Appellant's probation agent set forth the following allegations:

[Appellant] has failed to follow the advice and instruction of his agent by failing to submit to a urine sample. Subj. left the building without this agent's consent after being instructed that he must submit a urine sample. Fail to pay S/F. Current arrears \$950. Fail to pay fine. Current arrears \$108.

R. 5.

At the probation hearing, Mr. Brown told the court that Appellant was given the option to undergo substance abuse treatment rather than have probation revoked:

We had an administrative hearing, Your Honor, and I'm not a hearing officer, but I kind of could gauge where the hearing officer was going to go with her recommendation. . . . I believe that Mr. Green would have been continued at that hearing if he would have agreed to go into substance abuse treatment. He basically stated that he didn't want to do treatment, and I was taken aback by that because . . . they're offering . . . a way out and trying to get him help for his marijuana addiction, and he's saying that he doesn't want to go to treatment. Then the hearing officer had no other option but to forward this case to court and recommend revocation .

...

R. 11, line 15—R. 12, line 3. Appellant then told the judge he had informed Mr. Brown at the administrative hearing that the "only reason I don't want to do treatment is because I didn't have a job. I wouldn't have the money to pay for it." R. 12, lines 13-16.

DISCUSSION

The lower court's revocation of Appellant's probation constituted reversible error because the court failed to make the findings prescribed by law. Although "[p]robation is a matter of grace," the court may only revoke probation "upon an evidentiary showing of fact tending to establish a violation of the conditions." *State v Hamilton*, 333 S.C. 642, 648, 511 S.E.2d 94, 97 (Ct. App. 1999). In *State v Spare*, 374 S.C. 264, 647 S.E.2d 706 (Ct. App. 2007), this Court held a circuit court may only revoke probation on the basis of a failure to pay money by making the following findings based on sufficient evidence in the record: (1) The State has established that the probationer has violated the conditions of his probation. (2) The probationer's failure to pay was willful insofar as he either had the funds and chose not to or did not make a bona fide effort to acquire the funds. (3) If the probationer could not acquire the funds despite a bona fide effort, no alternate measures are adequate to meet the State's interests in punishment and deterrence. *See generally State v Coker*, 397 S.C. 244, 245-46, 723 S.E.2d 619, 620 (Ct. App. 2012).


In the case below, Mr. Brown issued Appellant a probation violation citation for failure to pay probation fees and failure to provide a sample for a drug test. At the hearing, Mr. Brown informed the court that Petitioner had the option of attending drug counseling classes rather than having his probation revoked. Appellant plainly told the court he could not attend the classes because he did not have a job and could not afford the cost of the classes. Thus, the record shows Appellant's alleged violations resulted uniformly from a failure to pay money. Therefore, under the mandate of *Spare*, the court was required to make inquiries at the hearing as to whether Appellant had made bona fide efforts to find a job and as to whether any measures beside revocation were adequate to

meet the State's interests in punishment and deterrence. Because the court failed to make findings on the record regarding these questions, its order of revocation was in error.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the ruling of the trial court and remand for a new probation hearing.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of October, 2014.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Aaron Green states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Maite Murphy, which was held on April 11, 2014, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Aaron Green.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of October, 2014.

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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment;
- (2) Sentence Sheet;
- (3) Probation Citation;
- (4) Affidavit supporting Probation Citation;
- (5) Transcript of April 11, 2014;
- (6) Order revoking probation.

I certify that this designation contains no matter which is irrelevant to this appeal.

October 23rd, 2014



Benjamin John Tripp
Appellate Defender

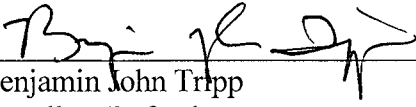
South Carolina Commission on Indigent Defense
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PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 23, 2014



Benjamin John Tripp
Appellate Defender

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Columbia, South Carolina 29211-1589

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CERTIFICATE OF SERVICE

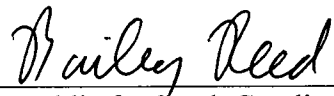
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Matthew Buchanan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Aaron Green, #359597 at Trenton Correctional Institution, this 23rd day of October, 2014.



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of October, 2014.



(L.S)
Notary Public for South Carolina
My Commission Expires: October 24, 2021 .